

Federal Reserve System

§210.6

(1) The alleged failure of the sender to have the authority to make the warranty and agreement in paragraph (a)(1) of this section;

(2) Any action by the Reserve Bank within the scope of its authority in handling the item; or

(3) Any warranty or indemnity made by the Reserve Bank under section 210.6(b) of this subpart, part 229 of this chapter, or the U.C.C.,

(d) *Methods of recovery.* (1) The Reserve Bank may recover the amount stated in paragraph (b) of this section by charging any account on its books that is maintained or used by the sender (or by charging a Reserve Bank sender), if—

(i) The Reserve Bank made seasonable written demand on the sender to assume defense of the action or proceeding; and

(ii) The sender has not made any other arrangement for payment that is acceptable to the Reserve Bank.

(2) The Reserve Bank is not responsible for defending the action or proceeding before using this method of recovery. A Reserve Bank that has been charged under this paragraph (c) may recover from its sender in the manner and under the circumstances set forth in this paragraph (c). A Reserve Bank's failure to avail itself of the remedy provided in this paragraph (c) does not prejudice its enforcement in any other manner of the indemnity agreement referred to in paragraph (a)(3) of this section.

(e) *Security interest.* When a sender sends an item to a Reserve Bank, the sender and any prior collecting bank grant to the sender's Administrative Reserve Bank a security interest in all of their respective assets in the possession of, or held for the account of, any Reserve Bank to secure their respective obligations due or to become due to the Administrative Reserve Bank under this subpart or subpart C of part 229 of this chapter (Regulation CC). The security interest attaches when a warranty is breached or any other obligation to the Reserve Bank is incurred. If the Reserve Bank, in its sole discretion, deems itself insecure and gives notice thereof to the sender or prior collecting bank, or if the sender or prior collecting bank suspends pay-

ments or is closed, the Reserve Bank may take any action authorized by law to recover the amount of an obligation, including, but not limited to, the exercise of rights of set off, the realization on any available collateral, and any other rights it may have as a creditor under applicable law.

[45 FR 68634, Oct. 16, 1980, as amended at 51 FR 21745, June 16, 1986; Reg. J, 59 FR 22965, May 4, 1994; 62 FR 48171, Sept. 15, 1997, Reg. J, 69 FR 62558, Oct. 27, 2004; 70 FR 71224, Nov. 28, 2005]

§210.6 Status, warranties, and liability of Reserve Bank.

(a)(1) *Status.* A Reserve Bank that handles an item shall act as agent or subagent of the owner with respect to the item. This agency terminates when a Reserve Bank receives final payment for the item in actually and finally collected funds, a Reserve Bank makes the proceeds available for use by the sender, and the time for commencing all actions against the Reserve Bank has expired.

(2) *Limitations on Reserve Bank liability.* A Reserve Bank shall not have or assume any liability with respect to an item or its proceeds except—

(i) For the Reserve Bank's own lack of good faith or failure to exercise ordinary care;

(ii) As provided in paragraph (b) of this section; and

(iii) As provided in subparts C and D of Regulation CC.

(3) *Reliance on routing designation appearing on item.* A Reserve Bank may present or send an item based on the routing number or other designation of a paying bank or nonbank payor appearing in any form on the item when the Reserve Bank receives it. A Reserve Bank shall not be responsible for any delay resulting from its acting on any designation, whether inscribed by magnetic ink or by other means, and whether or not the designation acted on is consistent with any other designation appearing on the item.

(b) *Warranties and liability.* The following provisions apply when a Reserve Bank presents or sends an item.

(1) *Warranties for all items.* The Reserve Bank warrants to a subsequent collecting bank and to the paying bank and any other payor that—

(i) The Reserve Bank is a person entitled to enforce the item (or is authorized to obtain payment of the item on behalf of a person that is either entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item);

(ii) The item has not been altered; and

(iii) The item bears all indorsements applied by parties that previously handled the item, in paper or electronic form, for forward collection or return.

(2) *Warranties for all electronic items.* The Reserve Bank makes all the warranties set forth in and subject to the terms of 4–207 of the U.C.C. for an electronic item as if it were an item subject to the U.C.C. and makes the warranties set forth in and subject to the terms of §229.34(c) and (d) of this chapter for an electronic item as if it were a check subject to that section.

(3) *Warranties and indemnity for electronic items that are not representations of substitute checks.* (i) If the electronic item is not a representation of a substitute check, the Reserve Bank warrants to the bank to which it transfers or presents that item that—

(A) The electronic image portion of the item accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated; the information portion of the item contains a record of all MICR-line information required for a substitute check under §229.2(aaa) of this chapter; and the item conforms to the technical standards for an electronic item set forth in an operating circular; and

(B) No person will receive a transfer, presentment, or return of, or otherwise be charged for, the electronic item, the original item, or a paper or electronic representation of the original item such that the person will be asked to make payment based on an item it already has paid.

(ii) If the item is an electronic item that is not a representation of a substitute check—

(A) Except as provided in paragraph (b)(3)(ii)(B) of this section, the Reserve Bank agrees to indemnify the bank to which it transfers or presents the electronic item (the recipient bank) for the amount of any losses that the recipient

bank incurs under subpart D of part 229 of this chapter for an indemnity that the recipient bank was required to make under subpart D of part 229 of this chapter in connection with a substitute check later created from the electronic item.

(B) The Reserve Bank shall not be liable under paragraph (b)(3)(ii)(A) of this section for any amount that the recipient bank pays under subpart D of part 229 of this chapter that is attributable to the lack of good faith or failure to exercise ordinary care of the recipient bank or a person that handled the item, in any form, after the recipient bank.

(c) *Limitation on liability.* A Reserve Bank shall not have or assume any liability to the paying bank or other payor, except as provided in paragraph (b) of this section, §229.34(c) or subpart D of part 229 of this chapter, or for the Reserve Bank's own lack of good faith or failure to exercise ordinary care.

(d) *Time for commencing action against Reserve Bank.* (1) A claim against a Reserve Bank for lack of good faith or failure to exercise ordinary care shall be barred unless the action on the claim is commenced within two years after the claim accrues. Such a claim accrues on the date when a Reserve Bank's alleged failure to exercise ordinary care or to act in good faith first results in damages to the claimant.

(2) A claim that arises under paragraph (b)(3) of this section shall be barred unless the action on the claim is commenced within one year after the claim accrues. Such a claim accrues as of the date on which the claimant first learns, or by which the claimant reasonably should have learned, of the facts and circumstances giving rise to the claim.

(3) This paragraph (d) does not alter the time limit for claims under section 229.38(g) of this chapter (which include claims for breach of warranty under §229.34 of this chapter) or subpart D of part 229 of this chapter.

[45 FR 68634, Oct. 16, 1980, as amended at 51 FR 21745, June 16, 1986; 53 FR 21984, June 13, 1988; Reg. J, 59 FR 22966, May 4, 1994; 62 FR 48172, Sept. 15, 1997; Reg. J, 69 FR 62559, Oct. 27, 2004; 70 FR 71225, Nov. 28, 2005]